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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8347 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RAVUBHA JORUBHA SODHA

Appearance:

1. Special Civil Application No. 8347 of 1989

MR PRANAV G DESAI for Petitioner No. 1

MR KETAN A DAVE for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 25/08/2004

ORAL JUDGEMENT

#. Heard learned advocate Mr.P.G.Desai on behalf of petitioner-Corporation and learned advocate Mr.Ketan Dave

on behalf of respondent-workman.

#. In the present petition, the petitioner-Corporation has challenged the award passed by the Labour Court, Bhavnagar, in Reference (LCB) No.183 of 1987. Under the impugned award, the Labour Court has granted reinstatement with 40% backwages for interim period and also awarded cost of Rs.100/=.

#. The respondent-workman was dismissed from service in Default case No.428 of 1982 with respect to the accident dated 24.2.1983. When the respondent-workman was on route from Ahmedabad to Mahuva in bus No.GRT-8448 at about 9:45 hrs. his bus dashed with one truck No.GTD-5144. Because of the said accident, chargesheet dated 9.8.82 was served on the respondent-workman. Thereafter, departmental inquiry was conducted and completed against him and he was dismissed from service. In respect to the same accident, criminal prosecution was also lodged against the respondent wherein he was acquitted. In the accident, the bus was damaged to the extent of more than Rs.50,000/= and three persons died and 38 persons were injured. The departmental appeal was filed by respondent-workmen by the same was rejected. Before the Labour Court, the Corporation has produced all the relevant record including the default card. The respondent-workman had completed more than eleven years of service.

#. The Labour Court considered the documentary evidence and also considered the important fact that the person who was examined before the departmental authority was not an eye witness. The misconduct which was alleged against the respondent was to the effect that he did not keep sufficient distance between the truck and his bus and that his how the accident occurred. The defence of the workman was that the truck was not having brake lights and all of a sudden, the truck was turned on right hand side without giving any signal and therefore just to save the bus from accident, the driver applied brakes and that is how the accident occurred. The panchnama was prepared on the next day and reporter was not having details of the accident because he was not an eye witness. The conductor was not examined in departmental inquiry and the persons whose statements were recorded by police were also not examined in departmental inquiry. The decision of the competent authority was based on reporter's evidence who was not an eye witness. Except that, no other person was examined in the departmental inquiry. Therefore, considering the entire facts the Labour Court came to conclusion that in the departmental

inquiry, the charge levelled against the respondent was not proved and ultimately considering some part of gainful employment, the Labour Court granted reinstatement with 40% backwages. Sixty percent backwages have been denied by the Labour Court on the ground that some carelessness on the part of respondent was found on record. The Labour Court also considered while denying 60% backwages that three persons died and 38 persons were injured.

#. This Court initially issued Rule and ad-interim relief in terms of paragraph 32(c) was granted subject to section 17B of the Industrial Disputes Act, 1947. This order was passed on 4.12.1989.

#. Learned advocate Mr.Ketan Dave appearing for respondent submits that after the award passed by the Labour Court and the order passed by this Court, the respondent-workman was reinstated in service. Thereafter, he attained the age of superannuation at least before four to five years and he has already retired from service. However, 40% backwages are not paid.

#. I have considered the submissions made by both the learned advocates and I have also perused the award passed by the Labour Court. In departmental inquiry, except the reporter, who was not an eye witness, no other person was examined. The panchnama was made on the next day of the incident. Conductor who was an eye witness was also not examined in departmental inquiry. The bus dashed with the truck going ahead of the bus and the truck was not having back lights. The truck had taken all of a sudden right turn which compelled the ST driver to apply brakes and that is how the accident occurred. Therefore, when there is no direct evidence proving carelessness and negligence of the respondent, finding of the competent authority cannot be said to be legal and valid. As a result thereof, dismissal order was required to be set aside and that has been rightly set aside by the Labour Court. In crimina case, the respondent-workman has been acquitted. An accident is after all an accident. Unless carelessness and negligence are proved by independent evidence against the workman, the workman cannot be punished for any kind of accident. The Labour Court has however taken care by not awarding full backwages for interim period as only 40% backwages have been granted and 60% have been denied in the light of fact that three persons died and 38 were injured. Therefore, according to my opinion, the Labour Court has not committed any error while passing such

award which requires interference by this Court.

#. Second aspect to be considered is that the workman was already reinstated in service and he has retired from service. Therefore, this is also a consideration not to disturb the award which has already been implemented by the Corporation to this extent. In view of this, there is no substance in the present petition. Accordingly, the petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated. No order as to costs.

(H.K.RATHOD, J.)

(sunil)